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17 Attorneys for Debtors and Debtors-in-Possession

18 **UNITED STATES BANKRUPTCY COURT**
 19 **DISTRICT OF NEVADA**

20 In re: 21 USA COMMERCIAL MORTGAGE COMPANY, 22 Debtor.	23 Case No. BK-S-06-10725 LBR 24 Case No. BK-S-06-10726 LBR 25 Case No. BK-S-06-10727 LBR 26 Case No. BK-S-06-10728 LBR 27 Case No. BK-S-06-10729 LBR
28 In re: 29 USA CAPITAL REALTY ADVISORS, LLC, 30 Debtor.	31 Chapter 11 32 Jointly Administered Under 33 Case No. BK-S-06-10725 LBR
34 In re: 35 USA CAPITAL DIVERSIFIED TRUST DEED FUND, 36 LLC, 37 Debtor.	38
39 In re: 40 USA CAPITAL FIRST TRUST DEED FUND, LLC, 41 Debtor.	42
43 In re: 44 USA SECURITIES, LLC, 45 Debtor.	46
47 Affects: 48 <input checked="" type="checkbox"/> All Debtors 49 <input type="checkbox"/> USA Commercial Mortgage Company 50 <input type="checkbox"/> USA Securities, LLC 51 <input type="checkbox"/> USA Capital Realty Advisors, LLC 52 <input type="checkbox"/> USA Capital Diversified Trust Deed Fund, LLC 53 <input type="checkbox"/> USA Capital First Trust Deed Fund, LLC	54

55 **NOTICE OF FILING OF**
 56 **TRANSCRIPT OF RULE 2004**
 57 **EXAMINATION OF DEL BUNCH**
 58 **TAKEN ON DECEMBER 19, 2006**

59 **(AFFECTS ALL DEBTORS)**

1 USA Commercial Mortgage Company, USA Securities, LLC, USA Capital Realty
2 Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC and USA Capital First Trust
3 Deed Fund, LLC (collectively, the "Debtors"), by and through their counsel, hereby file the
4 Transcript of the Rule 2004 Examination of Del Bunch taken on Tuesday, December 19, 2006,
5 which is attached hereto as **Exhibit "1."**

6 Respectfully submitted this 19th day of December, 2006.

7 /s/ Lenard E. Schwartzer, Esq.

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EXHIBIT “1”
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1 P R O C E E D I N G S
 2 (Exhibits A through I were
 3 marked for identification.)
 4 (Witness sworn.)

5 DEL M. BUNCH, JR.,
 6 having been first duly sworn, was
 7 examined and testified as follows:

EXAMINATION

9 BY MR. SCHWARTZER:

10 Q. State your name.

11 A. Del Bunch, B-u-n-c-h.

12 Q. And your address.

13 A. 1909 Red Robin Court.

14 MR. SCHWARTZER: And, Mr. Holley, I
 15 assume you want the court reporter to send any
 16 transcript of this for review?

17 Well actually it's a 2004 exam, so
 18 there's no review, so we don't need to contact
 19 anybody. Just prepare the transcript when we're
 20 done.

21 THE REPORTER: Okay. Thank you.

22 BY MR. SCHWARTZER:

23 Q. Is there any physical or mental reason
 24 why you cannot answer questions this afternoon?25 A. Just a little medication for a cold, but
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1 that's --

2 Q. Okay.

3 A. -- not affecting my mind yet.

4 Q. I understand that you are about 79 years
 5 old, 73 --

6 A. Yes.

7 Q. -- years old?

8 A. 79, yeah.

9 Q. And so if you get tired and need a break
 10 at any time, let me know.

11 A. Okay.

12 Q. You look fine to me, and I'm not
 13 suggesting that you're not.

14 A. Yeah, fine.

15 Q. I just want to make sure you understand
 16 that at any time you need a break, feel free to tell
 17 me and we'll take a break.

18 A. Okay.

19 Q. I represent the debtors and debtors in
 20 possession in the case of USA Commercial Mortgage
 21 and its affiliates. As a practical matter, I
 22 represent the new management, consisting of Mesirow
 23 Financial Services, which is headed for this case by
 24 Tom Allison, and I do not represent Joseph
 25 Milanowski or Tom Hantges, who are the principals

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1 and owners of this company.

2 A. Okay.

3 Q. So my client in part is a little bit in
 4 the dark with regard to everything that occurred
 5 prior to April 13th of this year. All we have is
 6 records. We don't have any firsthand knowledge, and
 7 so a lot of these questions may seem simple to you,
 8 but it's because we weren't there and I'm expecting
 9 since you were there you've got to have a better
 10 memory of it than my client because my client wasn't
 11 there.12 So to begin with, how did -- when did you
 13 first become aware of the company USA Commercial
 14 Mortgage?

15 A. I'm looking at these because --

16 Q. "These" being your bank statements?

17 A. Uh-huh, uh-huh. Sometimes they're --
 18 they had a name change at one point. I believe it
 19 was in '03 or '04, but if we can just say Commercial
 20 Mortgage, Commercial Capital maybe or --21 Q. I think they used the name -- and let's
 22 see if I'm correct. My understanding, that they
 23 generally used the name USA Capital rather than USA
 24 Commercial Mortgage. That was my impression.

25 A. Uh-huh.

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1 Q. So could you tell me when you first
 2 became aware of them.

3 A. Early 2000.

4 Q. Okay. And how did you become aware of
 5 the company?

6 A. Advertising.

7 Q. And did you contact them or did they
 8 contact you?

9 A. I believe I would have contacted them.

10 Q. Okay. Is there anybody in particular

11 that you recall first speaking to?

12 A. I believe it would have been Phill
 13 Dickinson.14 Q. Now, at the time you spoke to Phill
 15 Dickinson, did he identify what position he had with
 16 the company?17 A. His business card said "Vice President,
 18 Investments."19 Q. Okay. Were you aware of what kind of
 20 company USA Commercial was, USA Capital was?21 A. They were a licensed real estate loan
 22 broker.23 Q. Okay. Had you -- prior to your
 24 contacting them in 2000, had you had experience with
 25 real estate loans?

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1 **A.** Lots of it.

2 **Q.** And could you tell me your experience.
3 Generally over the years, what was -- what did you
4 do with commercial real estate loans?

5 **A.** I have never been in anything except
6 residential.

7 **Q.** So you didn't do commercial real estate
8 loans, but you did residential real estate loans?

9 **A.** Correct.

10 **Q.** And what kind of residential real estate
11 loans did you do?

12 **A.** Primarily single-family home.

13 **Q.** Okay. Now are you talking about you made
14 loans on a completed single-family home or did you
15 do --

16 **A.** No.

17 **Q.** -- for real estate development?

18 **A.** We worked with developers here in Las
19 Vegas, that we would make loans to them beginning
20 with acquiring the land, then going forward with the
21 infrastructure. Then the next step would be
22 building homes and selling them in phases.

23 **Q.** Okay. Now when you say "we," who do you
24 mean? What's the "we" group?

25 **A.** "We" is because I'm a strong believer
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1 **Q.** What was the source of funds? Where did
2 you get the money to start being into the
3 residential real estate loan development business?

4 **A.** By working like hell.

5 **Q.** Doing what?

6 **A.** Prior to moving to Las Vegas, we had a
7 construction company located in Bellflower,
8 California, and through that company we built
9 single-family homes and apartment buildings.

10 **Q.** So the source of the funds that you used
11 for the residential real estate loan business came
12 from the money you earned in the construction and
13 development business yourself?

14 **A.** Yes.

15 **Q.** Okay. And the reason I'm asking again is
16 because you said "we" and I want to know if you got
17 a group of people together or things like that.

18 **A.** "We" are my wife and I --

19 **Q.** Okay. That's what --

20 **A.** -- and our dog.

21 **Q.** Okay. When you met with Mr. Dickinson, I
22 note that at least one paper I have shows you said
23 you met with him early in June of 2000. Did you
24 meet with anyone else at that time?

25 **A.** Besides Phillip Dickinson?

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10 1 **Q.** that there is no letter "I" in the word "team." I
2 don't like the word "I."

3 **Q.** Did you work for a company?

4 **A.** Not in Las Vegas.

5 **Q.** Did you -- now your experience in this
6 residential real estate loan, was it -- where was
7 it, in what location?

8 **A.** California and Las Vegas.

9 **Q.** Okay. And how long have you lived in Las
10 Vegas?

11 **A.** July 1st, '81.

12 **Q.** And after that, how long have you made
13 residential real estate development loans in Las
14 Vegas, in Nevada?

15 **A.** Since the early '90s.

16 **Q.** Now, did you operate, did you have a
17 company name or did you have a licensed business or
18 something?

19 **A.** I had a DBA, Loan Partners Capital.

20 **Q.** Okay. Now that appears on the bank
21 statements. That appears to be Del Bunch DBA.

22 **A.** DBA, uh-huh, right.

23 **Q.** So is there anybody else that you made
24 investments for other than yourself?

25 **A.** No.

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1 **Q.** Yes, from USA Commercial.

2 **A.** Tom Hantges.

3 **Q.** Okay. And do you recall where you met
4 with him?

5 **A.** No, but it was a dinner meeting.

6 **Q.** Was there anybody else present?

7 **A.** Don Walker.

8 **Q.** Okay. That would be your son-in-law?

9 **A.** Son-in-law, uh-huh.

10 **Q.** Anyone else?

11 **A.** No, four people.

12 **Q.** So your wife wasn't present?

13 **A.** No.

14 **Q.** What was discussed at that dinner?

15 **A.** As I had mentioned previously, we had
16 been making loans to builders here in Las Vegas, so
17 we were actually in the same business as USA

18 Capital/Mortgage Company. We were in the same
19 business, and I just felt like I wanted to just slow
20 down, so we have made loans to them. We currently
21 also have loans with companies like Consolidated
22 Mortgage, OneCap, I believe Integrated. Might be
23 another name or so around.

24 **Q.** Okay. Now, let me understand now. The
25 loans that you made -- the arrangement you went into

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1 with USA Capital or USA Commercial Mortgage --
 2 **A.** Uh-huh.
 3 **Q.** -- that was a loan to the company, not a
 4 loan to a real estate developer; is that correct?
 5 **A.** That was a loan to Commercial Mortgage.
 6 **Q.** Okay. Now with OneCap, did you make
 7 loans to OneCap or did you make loans to real estate
 8 developers through OneCap?
 9 **A.** We have beneficial interest in loans with
 10 Consolidated, OneCap, Integrated, et cetera.

11 **Q.** So there are specific loans where the
 12 borrower makes the payments, you get your monthly
 13 interest check; right?

14 **A.** The borrower makes the payment to the
 15 mortgage company.

16 **Q.** Right.

17 **A.** The mortgage company forwards a check for
 18 our beneficial interest, yes.

19 **Q.** Okay. Now, with USA Commercial, there
 20 isn't -- there was no borrower behind it, was there?

21 **A.** There was originally, and it became
 22 cumbersome and I checked, I thought, quite
 23 thoroughly on USA Commercial Mortgage and was
 24 comfortable after reviewing their financials, tax
 25 returns, et cetera. I became comfortable enough to

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14
 1 just have an unsecured loan.
 2 Our original document called for a loan
 3 up to 10 million, and it started with the first
 4 check that we made was in June of 2000. The last
 5 check we issued would have been, I believe, March
 6 of -- no, February '04.

7 **Q.** Okay.

8 **A.** I have prepared a schedule that you have.
 9 **Q.** Right. And the promissory note that you
 10 mentioned, is that the promissory note that was
 11 attached to your proof of claim and is that a copy
 12 of it?

13 **A.** It would appear to be.

14 **Q.** Okay. And this is part of Exhibit I,
 15 which is the motion for order temporarily allowing
 16 the claim of Del and Ernestine Bunch for voting
 17 purposes with the proof of claim attached as Exhibit
 18 1 and the promissory note attached to it.

19 Was there ever a subsequent promissory
 20 note written between you and USA Commercial Mortgage
 21 after this June -- this note dated June 26, 2000?

22 **A.** I don't believe so.

23 **Q.** Is there --

24 **A.** No.

25 **Q.** -- any written amendment to this

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1 promissory note that was ever executed between you
 2 and USA Commercial Mortgage?
 3 **A.** No. The verbiage in the note states that
 4 we will make loans to them up to 10 million, and
 5 after a four-year time frame, we hit the 10 million
 6 number and we didn't make any additional loans to
 7 them.

8 **Q.** Okay. Was there ever -- I note this note
 9 says that it matures in one year from the date of
 10 the note. That would be June 26, 2001, right,
 11 because the note says the maturity date is one year
 12 from the date of the note?

13 **MR. HOLLEY:** I think it says one year
 14 after the last event.

15 **A.** Last deposit.

16 BY MR. SCHWARTZER:

17 **Q.** Oh, last deposit. Oh, sorry.

18 **A.** That's okay.

19 **Q.** Okay.

20 **A.** That's when in early '04 we hit the 10
 21 mill. that I mentioned and then we -- they were not
 22 interested in receiving any additional monies.

23 **Q.** So they were not interested in receiving
 24 any additional monies?

25 **A.** Correct.

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16

1 **Q.** Lucky you.

2 **A.** Yes.

3 **Q.** Okay. This note provides -- the
 4 promissory note provides for interest at the rate of
 5 20 percent per annum as a basic interest rate; is
 6 that correct?

7 **A.** Yes.

8 **Q.** Now, my understanding is that USA
 9 Commercial Mortgage is mostly loaning out money at
 10 12 percent interest to developers on properties.

11 **A.** Not necessarily. They also have made
 12 loans up to 20 percent plus a loan broker's fee, so
 13 obviously with our dollars they could earn more than
 14 they're paying us or they should have just returned
 15 our principal.

16 **Q.** Do you know any particular loans that
 17 they have where they got 20 percent interest?

18 **A.** Not that I am personally aware of.

19 **Q.** And --

20 **A.** But I have --

21 **Q.** -- who told you that they were making
 22 loans at 20 percent interest?

23 **A.** I don't recall. You're going back six
 24 years.

25 **Q.** And do you recall seeing any

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1 documentation of loans at 20 percent interest per
 2 annum?

3 **A.** No.

4 **Q.** And, see, my problem is, is I can't
 5 figure out what the heck they were doing because it
 6 looks to me they were mostly making loans at 12
 7 percent. If they're borrowing money at 20 percent,
 8 that means every day the loan's outstanding they're
 9 losing money.

10 **A.** It depends. Now I made loans to
 11 developers just as they were doing.

12 **Q.** Right.

13 **A.** And I was able to generate a little over
 14 30 percent APR.

15 **Q.** And that's because you counted the loan
 16 fees and --

17 **A.** You bet.

18 **Q.** -- and extension fees and things like
 19 that?

20 **A.** Correct.

21 **Q.** Okay. And that is your understanding of
 22 how they were going to be able to generate money if
 23 they borrowed money at 20 percent?

24 **A.** That is correct.

25 **Q.** Okay. Did you have discussions with them
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1 February '05.

2 **Q.** So after February '05, the interest rate
 3 went to 24 percent?

4 **A.** Yes.

5 **Q.** Okay.

6 **A.** And a late charge.

7 **Q.** And did --

8 **A.** I prefer to call it an extension fee,
 9 but --

10 **Q.** So in February of 2005, that would be one
 11 year when 12 percent went into effect; right?

12 **A.** You mean the 24?

13 **Q.** Yeah, yeah. I'm sorry.

14 **A.** That's okay.

15 **Q.** February 24, 2005, that's when the late
 16 charge went into -- that's also when the late charge
 17 would have gone into effect?

18 **A.** Yes.

19 **Q.** And since you had \$10,000,000
 20 outstanding, the late charge would have been 5
 21 percent or \$500,000?

22 **A.** Correct.

23 **Q.** Okay. Was that late charge ever paid?

24 **A.** No.

25 **Q.** Was there any subsequent time when there
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1 about that?

2 **A.** No.

3 **Q.** At first I note the note originally says

4 "This Note is secured by one or more collateral
 5 assignments of deeds of trust," and you mentioned
 6 that originally there was some; is that correct?

7 **A.** Originally there was going to be some,
 8 yes. There never was one because we had become --
 9 because of the financial information and tax
 10 returns, personal as well as business, I was of the
 11 opinion that we did not need to go through getting a
 12 beneficial interest in trust deeds, and you can
 13 imagine what that would have built into as we got up
 14 to our 10 mill. number. We would be doing
 15 reconveyances every month.

16 **Q.** Okay. When did the -- I notice in this
 17 document, in the promissory note, it provides for
 18 the default interest rate to be 24 percent interest.

19 **A.** Uh-huh.

20 **Q.** Do you know when did -- when, if ever,
 21 did that default interest rate go into effect?

22 **A.** The note mentions that the due date will
 23 be one year from the last deposit that we make. The
 24 last deposit we made would have been in February
 25 '04. One year from that date would have been
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1 was an additional late charge due?

2 **A.** It -- an additional late charge would
 3 have been due one year from the February 4th or 5th
 4 of '05.

5 **Q.** Okay. And was that late charge ever
 6 paid?

7 **A.** No.

8 **Q.** I note as part of Exhibit I -- I guess
 9 maybe I have it here too -- there's a schedule here.

10 It says "USA COMMERCIAL MORTGAGE, \$10,500.00 [sic] @
 11 24% for 1 year, Due 02/5/06," this schedule. Did
 12 you prepare that schedule?

13 **A.** I didn't, but my son-in-law did.

14 **Q.** Okay. And this is a schedule that would
 15 indicate this is based upon --

16 **A.** The document speaks for itself.

17 **Q.** Well, it may, but I just want to make
 18 sure that I understand what the document's saying.

19 **A.** Okay.

20 **Q.** The document is saying that on February
 21 1st, 2005 there was an addition to principal of
 22 \$500,000 and that was based upon the fact that there
 23 was a late charge?

24 **A.** Correct.

25 **Q.** Okay. And then when you have on February
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1 6th, 2006 when it has another addition to principal
 2 of \$525,000, that's also a late charge?

3 **A.** I don't agree with what you're saying.
 4 If you want to let me look at the document, I'll --

5 **Q.** If you want to tell me, I just want to
 6 know where the --

7 **A.** There's two late charges.

8 **Q.** Right.

9 **A.** One February '05, February '06.

10 **Q.** Uh-huh.

11 **A.** Period.

12 **Q.** Right.

13 **A.** Oh, if that's what it shows, then that's
 14 accurate.

15 **Q.** Then that's the late charge based upon
 16 the late charge provision in the promissory note?

17 **A.** Correct.

18 **Q.** Because it looks to be 5 percent of the
 19 principal amount.

20 **A.** Yes.

21 **Q.** Okay. I just was trying to confirm that
 22 you did not make an additional loan at these two
 23 times.

24 **A.** Oh, no.

25 **Q.** That's all I'm trying to get at. You
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22

1 see?

2 **A.** Right.

3 **Q.** Because the charge says principal and it
 4 doesn't say what it's for. It does say 5 percent
 5 late charge. I just wanted to make sure it wasn't
 6 an actual payment.

7 **A.** Okay.

8 **Q.** Also, this document has on it payments
 9 received as one of the columns, and it has here in
 10 this column over here, in the last column of payment
 11 received, it has \$196,000, but I don't see what date
 12 that was received.

13 MR. HOLLEY: Lenard, is this the last
 14 entry you're looking at on that schedule in --

15 MR. SCHWARTZER: It's the last entry in
 16 the column entitled "PAYMENT RECEIVED."

17 MR. HOLLEY: Okay.

18 MR. SCHWARTZER: All the other payment
 19 receiveds have a date next to it, but that
 20 particular one does not.

21 THE WITNESS: It does up above for some
 22 reason. Oops.

23 BY MR. SCHWARTZER:

24 **Q.** So that would be --

25 **A.** 196 down here.

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1 **Q.** Right. And that says due 2/5/06 and it
 2 looks like it says in the column marked "FROM" date
 3 it says 2/1/06 to 2/6/06 and then it has a payment
 4 received, \$196,000, but then there's another line
 5 below that which has another what appears to be a
 6 payment of 196, so I'm just trying to figure out did
 7 you receive a payment --

8 **A.** Lenard, in 2006 --

9 **Q.** Yes.

10 **A.** -- we received three payments. We
 11 received one in January, which would have been
 12 interest for December.

13 **Q.** Okay.

14 **A.** We then received the -- it was a 275 --
 15 217,000, I believe, amount received in February,
 16 early February, and that would have been for
 17 January's interest. Then we received \$196 --
 18 196,000 in early March, which would have been
 19 interest for February, the lesser amount because
 20 there are less days in February than there are in
 21 December or January.

22 **Q.** Okay.

23 **A.** It's a daily rate.

24 **Q.** Okay. Is there some documentation
 25 showing when you received the payment in January
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24

1 among your bank --

2 **A.** Of this year?

3 **Q.** Of this year, 2006.

4 **A.** You bet.

5 MR. HOLLEY: Let me get -- Mr. Bunch, I
 6 can --

7 THE WITNESS: Yeah, we have a copy of all
 8 of this.

9 MR. SCHWARTZER: Good.

10 MR. HOLLEY: Here's some. Lenard, these
 11 are the '06 --

12 MR. SCHWARTZER: Bank statements?

13 MR. HOLLEY: -- statements.

14 MR. SCHWARTZER: Okay. Is this all three
 15 months here? Why don't we mark these as J, K and L.

16 MR. HOLLEY: Do you want to do that or do
 17 you want to just mark them as one?

18 MR. SCHWARTZER: Well I want to ask about
 19 each one.

20 MR. HOLLEY: Okay.

21 (Exhibits J through L were
 22 marked for identification.)

23 BY MR. SCHWARTZER:

24 **Q.** Mr. Bunch, we've just marked the bank
 25 statements your attorney gave me, and I just wanted
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1 you to confirm that these are the bank statements
 2 for your account, copies of the bank statement of
 3 your account for the months of January, February and
 4 March.

5 **A.** Yes.

6 **Q.** Okay.

7 **A.** They are.

8 **Q.** And it appears to me that the one that's
 9 marked Exhibit J shows that you received the payment
 10 from USA Commercial Mortgage and deposited it in
 11 your account on January 10th, 2006 in the amount of
 12 \$217,000. Is that correct?

13 **A.** That's what the document shows.

14 **Q.** And do you have any recollection
 15 different from that or is that -- this is accurate?

16 **A.** That's -- it better be.

17 **Q.** Okay. And then Exhibit K is the February
 18 bank statement, and that shows you received a
 19 payment from USA Capital in the amount of \$217,000
 20 on February 9th, 2006; is that correct?

21 **A.** Correct.

22 **Q.** And that would be the -- and you would
 23 agree that's the date you received the payment from
 24 USA Capital?

25 **A.** Uh-huh.

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26 1 **Q.** By the way --
 2 **A.** Those are wires.
 3 **Q.** That's what I was going to ask you.
 4 These aren't checks that you deposited. They're
 5 wire transfers, so they have immediate credit upon
 6 them hitting your bank account?

7 **A.** Correct.

8 **Q.** Okay. In looking at Exhibit L, it
 9 indicates that there was a wire from USA Capital to
 10 your bank account in the amount of \$196,000 on March
 11 13th, 2006; is that correct?

12 **A.** That's what the document shows, yes.

13 **Q.** And it's your recollection that that's
 14 when the payment was received, or you have no
 15 recollection?

16 **A.** I have to go by -- I'm a strong believer
 17 in documents.

18 **Q.** So I should assume that that's when that
 19 account -- that monies hit your account as well?

20 **A.** Yes.

21 **Q.** And did you receive any payments from USA
 22 Capital after March 13th, 2006?

23 **A.** No.

24 **Q.** Have you received any payments from
 25 Mr. Milanowski or Mr. Hantges since March 13th,

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1 2006?

2 **A.** No.

3 **Q.** Have you made demand upon Mr. Hantges
 4 or Mr. Milanowski for payment since March 13th,
 5 2006?

6 **A.** I gave you correspondence that showed
 7 that when we were negotiating in early '04 that
 8 because we were not coming up and being able to
 9 agree, I had at that point made demand for payment
 10 in full.

11 **Q.** Okay. And when you say that, are you
 12 referring to this letter, which has been marked as
 13 Exhibit A, or is it another letter?

14 **A.** No, it would be the next one dated July
 15 something.

16 **Q.** Okay.

17 **A.** Latter part of July.

18 **Q.** Okay. That would be the letter that's
 19 marked Exhibit B?

20 **A.** Yes, uh-huh.

21 **Q.** Okay.

(Telephone interruption.)

22 MR. SCHWARTZER: We'll take a break for
 23 the phone.

24 (Discussion off the record.)

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1 BY MR. SCHWARTZER:

2 **Q.** So the July 22nd letter, which is Exhibit
 3 B, has your note back, and this is a letter -- I
 4 assume this is a copy of a letter that you sent back
 5 to Mr. Milanowski?

6 **A.** Milanowski, correct.

7 **Q.** Okay.

8 **A.** Yes.

9 **Q.** Okay. What was the problem you had that
 10 caused you in July of 2004 to decide that you didn't
 11 want to leave the \$10 million with USA Capital
 12 anymore?

13 **A.** Part of what we were talking about was we
 14 did not want to receive our payoff without what we
 15 would consider sufficient notice. I've had that
 16 happen to me before, and that's a lot of money to
 17 get at one time when you don't have a plan as to
 18 where it's going to go.

19 **Q.** So your basic problem with them is they
 20 kept on saying, "We're going to start paying you
 21 back," and you said, "I don't like that idea. I
 22 want you to keep it out or give me a set schedule
 23 for repayment"?

24 **A.** Something that we could mutually agree
 25 upon, yes.

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1 **Q.** Okay. After you sent the letter that's
 2 been marked as Exhibit B, which is your notice of --
 3 which says "Please consider this reply as notice of
 4 our intent to be repaid as per the terms of our ten
 5 million dollar . . . note," did you have any further
 6 communications with Mr. Milanowski or anyone else
 7 from USA Capital about paying back the note?

8 **A.** Well, first of all, with the late charge,
 9 it would not have been due until February '05.

10 **Q.** Right, I understand. So February '05
 11 comes by. You haven't gotten a payment, have you?
 12 You've got your monthly interest payments I take it?

13 **A.** Correct.

14 **Q.** And those monthly interest payments are
 15 at 20 percent a month at that time or are they
 16 already raised?

17 **A.** No, they would have gone to the default
 18 rate in February '05.

19 **Q.** Okay. So between July 2004 and February
 20 '05, you would have continued to get your monthly
 21 interest check at the 20 percent rate?

22 **A.** I believe so.

23 **Q.** Okay. And February '05 comes, which
 24 that's the due date of the note. Did you ask them,
 25 "Am I going to get paid?" Did you have any

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1 communication with them whether they were just going
 2 to pay it off in February of '05 rather than pay the
 3 late charge?

4 **A.** Well after a certain number of days, as
 5 per the note, the default late charge would have
 6 automatically kicked in. We would have somewhere in
 7 that area or time frame agreed to extend it for one
 8 more year.

9 **Q.** Now as I understand the note, they had an
 10 absolute right to extend it one more year. Is that
 11 correct?

12 **A.** No.

13 **Q.** No, they didn't?

14 **A.** No.

15 **Q.** So they had a right if they didn't pay it
 16 on February 5th, 2005, they owe you a 5 percent late
 17 charge?

18 **A.** Correct.

19 **Q.** And they owed you the whole \$10 million?

20 **A.** 10 mill. 5.

21 **Q.** Yeah, the 10 million plus the 5 percent
 22 late charge.

23 **A.** Uh-huh.

24 **Q.** Did you have any communication at that
 25 time with anyone with USA Capital about what they

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1 **Q.** were going to do?

2 **A.** First of all, all of my -- I'm going to
 3 say 99 percent of my communication with USA was
 4 through Phill Dickinson.

5 **Q.** Okay.

6 **A.** He was their representative to us. And
 7 did I talk to him? Yes.

8 **Q.** I mean, in January of '05 did you say,
 9 "By the way, am I going to get a check for \$10
 10 million, because, you know, I'd be really upset if
 11 you paid it all off and I have nowhere to put it"?

12 Did you have that kind of communication with him?

13 I don't want to put words in your mouth.
 14 I'm just trying to figure out.

15 **A.** No, no, I understand, but I'm trying to
 16 think of the time frames of these things.

17 For whatever reason, we agreed to extend
 18 the note for one year at the default rate.

19 **Q.** Okay. So that would have been from
 20 February -- the extension would have been from
 21 February 5th, 2005 to February 5th, 2006? That
 22 would be the one-year extension?

23 **A.** I believe so.

24 **Q.** Okay. During that period of time, they
 25 are paying -- it appears to me they were paying you
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1 **Q.** interest at the 24 percent interest rate.

2 **A.** Correct.

3 **Q.** And that was based upon then an
 4 outstanding principal balance of \$10,500,000?

5 **A.** I believe so.

6 **Q.** Okay. Did you have any conversations
 7 about what they were going to do in February of '06
 8 with Mr. Dickinson or anybody else from USA Capital?

9 **A.** Don't recall.

10 **Q.** I mean, the reason I ask is because you
 11 made it very clear in your letter back in June of
 12 2004 one of the things you didn't want to happen is
 13 somebody dumping a million dollars on your lap that
 14 you'd have to reinvest.

15 **A.** Uh-huh.

16 **Q.** So it seems natural to me that you would
 17 have asked, "Are you going to dump \$10,500,000 on my
 18 lap to reinvest?" And you don't recall ever having
 19 that conversation?

20 **A.** With that late charge, I could have
 21 accepted a \$10,500,000 lump-sum payment.

22 **Q.** Okay. But I'm just asking. You --

23 **A.** I'm a numbers and interest --

24 **Q.** Yeah.

25 **A.** -- person.

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1 BY MR. SCHWARTZER:

2 Q. I thought it was HMA Sales.

3 A. Whatever it is.

4 Q. Did you ever hear of that company?

5 A. Not before I had those documents and
6 concerning the hotel.

7 Q. Okay. And when you saw the documents
8 concerning the Royal Hotel, they had the name HMA
9 Sales on it?

10 A. Yes, I believe so.

11 Q. And did you ask Mr. Milanowski or anyone
12 else how HMA Sales was going to give you a lien for
13 money that you were owed by USA Commercial Mortgage?

14 A. You must recall I had their financial
15 statements for years.

16 Q. Right.

17 A. The entity owning the hotel was in their
18 financial statements.

19 Q. Okay. Did you hear -- when you looked --
20 do you have copies of Mr. Milanowski's and
21 Mr. Hantges's financial statements that you were
22 given?

23 A. Yes.

24 Q. Okay. Would --

25 A. And I supplied them to --

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1 Q. Did you give them to Mr. Allison or to --

2 A. No, I didn't give them to Mr. Allison.

3 He already had them there.

4 Q. Okay.

5 A. I gave them to the law firm that Rob is
6 with, Lewis and Roca.

7 Q. Lewis and Roca. Okay.

8 A. Right. I gave them all of our records
9 from as far back, being 2000 forward.

10 Q. Okay.

11 A. Yes.

12 Q. So I just wanted to make sure that we
13 already had those because it would be interesting to
14 see from my point of view if the financial
15 statements he gave you were the same as the
16 financial statements they gave other people.

17 A. I wouldn't bet on that, but -- now, but
18 I'd be shocked if they were different.

19 Q. Yeah, we'd both have questions about it.

20 I notice that the other things that are
21 attached to one of your declarations appears to be
22 things concerning the financial statements, and like
23 Exhibit C is a letter you sent to an auditor it
24 appears to be?

25 A. Yes. This was the second one that we

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1 had.

2 Q. And Exhibit D is another letter that --

3 A. Was the first one. June 20th, '03 it's
4 dated, and those amounts agree with their financial
5 statements.

6 Q. All right. And --

7 A. At least the ones they provided me with.
8 Q. And Exhibit E looks like a list of the
9 investments that you made, the monies that you
10 provided to USA Capital.

11 A. Yes. Yes.

12 Q. Now who prepared that exhibit?

13 A. Don Walker, my son-in-law.

14 Q. Okay. And from which document -- what
15 documentation did he base that on?

16 A. Bank statements.

17 Q. And that would be your bank statements
18 that you provided to him?

19 A. Yes.

20 Q. And to the best of your knowledge, this
21 is an accurate list of the monies that you sent to
22 USA Commercial Mortgage?

23 A. To the best of my knowledge, it's 100
24 percent accurate.

25 Q. Now when you made out -- I notice some of
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1 those items say "WIRE" and some of them look like
2 it's check numbers. Could you tell me when you were
3 writing out checks to what entity did you make the
4 checks payable?

5 A. I gave you copies of the checks.

6 Q. Okay. That would be Exhibit F, what I
7 have marked here as Exhibit F?

8 A. Yes, front and back.

9 Q. Okay. And Exhibit F would have copies of
10 all the checks that you wrote --

11 A. That are on that list.

12 Q. Okay.

13 A. Yes.

14 Q. So it looks like in each case the checks
15 were payable to USA Commercial Mortgage, but I
16 notice that some of them say "USA Commercial
17 Mortgage," but some of them also say "USA Commercial
18 Mortgage Investors Trust."

19 A. I doubt it. Let me see.

20 Q. For example, here, this one, and that one
21 is -- what's the date on that check?

22 A. December '03, December 8th, '03.

23 Q. Is there some reason that check was
24 written to USA Commercial Mortgage Investors Trust?

25 A. I could not tell you.

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1 **Q.** Do you have any recollection today of who
2 would have asked you to make the check out payable
3 to that?

4 **A.** No, but that's the gal that issues our
5 checks, and why that one would be made out as it is,
6 the first time I recall ever seeing that.

7 **Q.** Okay. Let me ask this question since
8 there's --

9 **A.** Sure.

10 **Q.** -- another person who prepares your
11 checks.

12 **A.** Yes.

13 **Q.** Oh, see, I didn't know that.

14 **A.** This person. I'm sorry.

15 **Q.** And who's that person?

16 **A.** That person worked with us at the time.
17 She happens to be my niece also, and she paid all
18 checks that had to go out involving our DBA.

19 **Q.** Okay. And what is her name?

20 **A.** Her name is Cyd Allred.

21 **Q.** And how do you spell her last name?

22 **A.** A-I-I-r-e-d.

23 **Q.** And her first name, how do you spell
24 that?

25 **A.** Cyd.

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1 **Q.** S-i-d or S-y-d, because it's unusual for
2 a woman?

3 **A.** C-y-d.

4 **Q.** C-y-d. See, I got it completely wrong.

5 **A.** S-i-d is a male I believe.

6 **Q.** That's like Cyd Charisse.

7 And where does she reside?

8 **A.** Las Vegas, Nevada.

9 **Q.** Here. Do you recall the address?

10 **A.** No.

11 **Q.** Do you recall the telephone number?

12 **A.** Yes, 242-9487.

13 **Q.** Okay. And for what period of time did
14 she do your check preparation?

15 **A.** If we look at the checks, I can answer
16 your question.

17 **Q.** It's hard to say because some of them are
18 really illegible and some of them are clearly not --

19 **A.** That's Don Walker.

20 **Q.** That's Don Walker's signature?

21 **A.** Right.

22 **Q.** Now I notice that -- let's ask about this
23 check. This is a check dated August 9th, 2003.
24 It's signed by Don Walker, who's your son-in-law.

25 **A.** Uh-huh.

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1 **Q.** And it's on your account, and that check
2 is made payable to USA Capital. Do you know why
3 that check was made out that way?

4 **A.** No. I just know it had no problem
5 clearing.

6 **Q.** Well, my guess is your checks never have
7 any problem clearing. Okay.

8 And here's another check made out by your
9 niece. It looks like a check -- and it's hard for
10 me to read the date upside down.

11 **A.** Well the date's up here, isn't it?

12 **Q.** Yeah.

13 **A.** Maybe that's when the bank got it.

14 **Q.** So that's dated in July of 2003 and it's
15 for the amount of -- what is the amount?

16 **A.** Where's my list?

17 **Q.** 50,000? Is that for \$50,000?

18 **A.** Could be.

19 **Q.** Okay.

20 **A.** Could be.

21 **Q.** And that's also signed by your niece,
22 Cyd?

23 **A.** Yes.

24 **Q.** And it's also made payable to USA

25 Commercial Mortgage Investors Trust. Do you have
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1 any reason at this time to recall why it was made
2 out to the Investors Trust rather than to USA
3 Commercial Mortgage?

4 **A.** None at all. That's -- today is the
5 first time I've ever noticed that.

6 **Q.** Okay. Now I can show you the next check.
7 This check is dated June 2003 and it's for an amount
8 of 1,105,000. It also is signed by your niece, Cyd.

9 **A.** Uh-huh.

10 **Q.** And it also is made -- do you agree that
11 it's also made out to the USA Commercial Mortgage
12 Investors Trust?

13 **A.** That's what the check says, yes.

14 **Q.** And at this time do you have any
15 recollection why the checks were being made out to
16 the Investors Trust rather than --

17 **A.** This meeting is the first time I have
18 ever seen a check made out like that. I don't see
19 the checks.

20 **Q.** Okay.

21 **A.** Until we need them.

22 **Q.** Now who would have communicated with Cyd
23 or Don Walker? Because they've been writing, wrote
24 those checks, who would have been the person
25 communicating with them about how much to make the
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1 check out for and to whom to make the check out to?
 2 A. They would have been communicating with
 3 me.
 4 Q. Okay.
 5 A. And I with them.
 6 Q. Okay. So now I notice -- so you would
 7 have always told them the amount?
 8 A. Correct.
 9 Q. But it says here again -- and I'm looking
 10 through these checks, and here's another one for
 11 \$45,000 and it's made out to USA Commercial Mortgage
 12 Investors Trust and it's dated May 23rd, 2003. At
 13 least that's when it cleared the bank.
 14 A. Same answer.
 15 Q. So you have no recollection why it was
 16 made out to that entity?
 17 A. No, but I sure will by the end of today.
 18 Q. Who will you ask to get the answer to
 19 that question?
 20 A. Cyd.
 21 Q. Okay. And with the one made out --
 22 A. All of them --
 23 Q. -- to Capital --
 24 A. -- made out to Investors Trust is what I
 25 will be asking her about.

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1 Q. Because I'm looking through these and it
 2 appears that almost all of these are made out to the
 3 Investors Trust. You could confirm it, too, by
 4 looking through it.
 5 A. Those are factual check copies, so --
 6 Q. Yeah.
 7 A. -- however they're made payable is --
 8 Q. And it appears that each one that Cyd has
 9 signed is made out to USA Commercial Mortgage Trust
 10 and there's one by Mr. Walker that's made out to USA
 11 Commercial and there's one by Mr. Walker that's made
 12 out to USA Capital, but all of the ones signed by
 13 Cyd are made out to USA Commercial Mortgage
 14 Investors Trust. Do you want to look through this
 15 and confirm --
 16 A. No.
 17 Q. -- that my analysis is correct?
 18 A. No. I have a copy.
 19 Q. But Exhibit F is a true and correct copy
 20 of your records?
 21 A. Yes.
 22 Q. Okay.
 23 A. My bank's records.
 24 Q. Your bank's records.
 25 A. Right.

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1 Q. And let me ask you what Exhibit G is.
 2 A. Exhibit G would be balance sheets of USA
 3 Commercial Mortgage Company from '99 and 2000
 4 through December 31st, 2005.
 5 Q. Okay. And do you recall where you
 6 received these from, who gave them to you?
 7 A. Those would have been received by us I
 8 believe by mail.
 9 Q. Okay. Now these documents were attached
 10 to your declaration, and I notice they look like
 11 financial statements in a format that is usually
 12 used by accountants. Do you recall whether you
 13 received the cover sheet signed off by the
 14 accountant as well?
 15 A. We would have.
 16 Q. So this is --
 17 A. I do believe.
 18 Q. So this is not a complete document, what
 19 I have here?
 20 A. It's a one-page balance sheet.
 21 Q. Okay. Well, I'm just saying it's a
 22 balance sheet. The first page is consolidated
 23 balance sheets December 31st, 2000 and 1999, and
 24 that has on it marked page 2. And the next thing on
 25 it is marked page 13, so obviously if this is --

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1 sheet they would have a narrative on covering
 2 what -- explaining what different lines on the
 3 financials were, et cetera.

4 **Q.** So basically you wanted me to see or the
 5 court to see the fact that the balance sheets of USA
 6 Commercial Mortgage listed notes payable and they
 7 had notes payable, including the first one on the
 8 list being with interest payable at 20 percent
 9 interest, which I assume is at that point in time
 10 the amount of money that they owed to you, that USA
 11 Commercial Mortgage owed to you?

12 **A.** Those amounts on those dates will confirm
 13 the list of checks that we provided by date.

14 **Q.** Okay. Was there any period of time where
 15 Mr. Hantges, Mr. Dickinson, Mr. Milanowski or
 16 someone else from USA Commercial gave you any
 17 specifics on how the money you were loaning to the
 18 company was being used?

19 **A.** No.

20 **Q.** Did they -- I note that you didn't loan
 21 all the money all at one time; you loaned it over a
 22 period of time.

23 **A.** Didn't have it all at one time.

24 **Q.** Did they ever call up and say, "Hey, Del,
 25 I need \$200,000 to put in this deal. Could you loan

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1 it to us?"

2 **A.** Never.

3 **Q.** How was it determined that you would loan
 4 money to them? Was it because you had the money?

5 **A.** Because we would have received payoffs
 6 from monies we had invested.

7 **Q.** So the real driver in making this loan
 8 was when you got money from some place else that you
 9 had to invest, you sent it to USA Capital?

10 **A.** Correct.

11 **Q.** You didn't ever call them up and say, "Do
 12 you need the money?"

13 **A.** (Shaking head.)

14 **Q.** And of course apparently they never said,
 15 "No, we don't want it"?

16 **A.** We already had an agreement up to 10
 17 million.

18 **Q.** I understand, but so the agreement was
 19 you could force them to borrow up to 10 million?

20 **A.** I don't know if you would want to say
 21 force to because if they said, "We -- you know,
 22 right now we'd rather do something different, like
 23 not accept any more," we would have accommodated
 24 them because there's other places that we could put
 25 money.

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1 **Q.** But I'm just trying to say they never --
 2 I'm just trying to make it clear they never called
 3 you up and said, "We need money"?

4 **A.** (Shaking head.)

5 **Q.** Now when you had the extra money, was
 6 there someone you called over there and said, "Oh,
 7 by the way, I'm sending over a check for
 8 \$1 million"?

9 **A.** Phill Dickinson would pick them up
 10 physically from us.

11 **Q.** I notice a couple were wire transfers.
 12 Was there anything different on the days that you
 13 did the wire transfers?

14 **A.** Couldn't tell you.

15 **Q.** Okay. Now, when Cyd or Don wrote the
 16 checks, okay, but Phill Dickinson picked them up,
 17 did he pick them up from Cyd and Don or did he pick
 18 them up from you?

19 **A.** A good bit of the time we would leave it
 20 at the guard shack in the front entrance, meaning
 21 that Phill could then come by 1:00, 2:00, 4:00,
 22 whenever, and pick it up, which means we didn't have
 23 to be sitting here waiting for him to pick them up.

24 **Q.** When you say "we" --

25 **A.** "We," my wife and I.

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1 **Q.** -- or apartment or her own residence?
 2 **A.** Yes.
 3 **Q.** Did she have an office to work out of?
 4 **A.** In her home.
 5 **Q.** In her home, so wherever she did it,
 6 wherever her home was, that's where she worked out
 7 of?
 8 **A.** Yes.
 9 **Q.** So what you're telling me is if she wrote
 10 the check in her office, signed it, she could have
 11 just delivered it over to the guard gate without you
 12 ever seeing it?
 13 **A.** Yes.
 14 **Q.** And without you ever touching it even?
 15 **A.** Yes.
 16 **Q.** Is the same true with the checks prepared
 17 by Don Walker?
 18 **A.** Yes.
 19 **Q.** How would have he gotten the checks to
 20 write them?
 21 **A.** Would have had to be from Cyd.
 22 **Q.** Okay.
 23 **A.** Sometimes when Cyd goes on vacation she
 24 leaves extra checks with Don, and that's when he
 25 would typically have signed one.

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1 **Q.** Okay.
 2 **A.** But there was never a check written that
 3 I didn't say, "It's for 'X' number of dollars."
 4 **Q.** Okay. So I understand.
 5 Part of Exhibit I is a schedule that says
 6 "Interest & additional charges for USACM bankruptcy,
 7 All charges pre-petition." Okay?
 8 Do you know who prepared that schedule?
 9 **A.** Don Walker.
 10 **Q.** And I'm not sure why it says that the --
 11 it says "DATE INCURRED" on several items and at
 12 least one of the items --
 13 **A.** I have a copy here.
 14 **Q.** Okay. Says the date incurred is -- the
 15 last item is date incurred "April 06 interest unpaid
 16 (to petition date)." I assume that means he
 17 calculated the interest only through April 13th,
 18 2006, the date of the petition?
 19 **A.** April 13th, yeah. That's what the
 20 Bankruptcy Code says.

21 **Q.** Okay.
 22 **A.** It's my understanding that after that
 23 petition date we get a lesser amount of interest
 24 than we have been collecting from Commercial
 25 Mortgage, which of course we will be going after

1 them for the difference.

2 **Q.** Okay. If the Chapter 11 plan is not
 3 confirmed, what is your belief what will happen in
 4 this Chapter 11 case?

5 MR. HOLLEY: I'm going to interpose --

6 **A.** Do you want my guess?

7 MR. HOLLEY: Just a minute. I'll just
 8 interpose an objection at this point to the extent
 9 it asks for a legal conclusion on the part of the
 10 witness.

11 BY MR. SCHWARTZER:

12 **Q.** And the answer is?

13 **A.** The answer is what he said.

14 **Q.** No, he didn't tell you not to answer. He
 15 just said --

16 **A.** Well he told you what --

17 **Q.** -- you would be making some legal
 18 conclusions, but I'm trying to find out where you
 19 think this case should go if the plan is not
 20 confirmed because you are a major creditor --

21 **A.** Uh-huh.

22 **Q.** -- and it is important to -- you know, we
 23 try to get a consensual plan and we're trying to
 24 figure out how we can get this plan to be a
 25 consensual plan, and like I said, you're a large

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1 **A.** creditor.

2 **A.** The unsecured creditors of USA Commercial
 3 Mortgage are scheduled to take a bath reduction in
 4 their amounts due by upwards of \$50 million. The
 5 plan says 8 to 33 percent, and I got to tell you I
 6 just feel that that's not right for the unsecured
 7 creditors, who, in my opinion, would be receiving a
 8 lesser amount percentage-wise than either of the two
 9 funds or the individual direct lenders, just that
 10 simple.

11 **Q.** Okay. So that's your -- that's the
 12 problem you have, but do you have any alternative
 13 ideas of how to increase the amount of money
 14 available to pay unsecured creditors that have
 15 not -- that are not provided for in the plan?

16 MR. HOLLEY: Same objection.

17 MR. SCHWARTZER: And I'll recognize it's
 18 a continuing objection.

19 MR. HOLLEY: Thank you.

20 **A.** Sorry.

21 BY MR. SCHWARTZER:

22 **Q.** I'm trying to find out is there some
 23 other way of getting more money into the bankruptcy
 24 estate than is described into the plan?

25 **A.** I believe so. We have not been able to
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1 get financial information out of Tom Allison,
 2 et cetera, from day one as to how much cash has been
 3 collected for things like late charges, default
 4 interest, exit fees, et cetera. I can't tell you as
 5 we sit here because he has been unwilling to provide
 6 that information.

7 **Q.** Okay.

8 **A.** It's my belief that the amounts of monies
 9 that would be available after administrative fees,
 10 a.k.a. Mesirow, you, et cetera, that there would be
 11 considerably more than 8 to 33 percent available for
 12 the unsecured creditors of Commercial Mortgage.

13 **Q.** If what happened? I mean, we want to be
 14 out of the -- Mesirow wants to be out of this. As
 15 much as I enjoy doing this, my job is to work myself
 16 out of a job, like every Chapter 11 attorney.

17 If we don't have a plan confirmed, we're
 18 still stuck in the business. How would we -- how do
 19 we get from where we are now to out of the business?
 20 Somebody has to run the business. Who would -- is
 21 there someone you would prefer to be running the
 22 business?

23 **A.** I have no idea, but I do know that
 24 there's more than one qualified mortgage collection
 25 business here in Las Vegas --

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1 **Q.** Yeah.

2 **A.** -- that could handle it to answer your
 3 question.

4 **Q.** Well, do you have a problem with the
 5 people from Compass handling the collection?

6 **A.** None at all.

7 **Q.** Okay.

8 **A.** No. And I might explain why, because
 9 they're not collecting any notes and deeds of trusts
 10 for the unsecured creditors.

11 **Q.** Actually they're not. You're right.

12 They're just going to be collecting it for the
 13 direct lenders and to the extent that either First
 14 Trust Deed Fund or Diversified Trust Deed Fund has a
 15 fractional interest of some loans it will be
 16 collecting for those entities as well.

17 **A.** That's my understanding.

18 **Q.** Okay. Do you have any -- have you had
 19 any conversations or have you made any since the
 20 filing of the bankruptcy with Mr. Hantges or
 21 Mr. Milanowski?

22 **A.** I have not talked with Tom Hantges. I
 23 have talked with Joe Milanowski --

24 **Q.** And --

25 **A.** -- by phone.

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1 **Q.** And do you recall when that was?

2 **A.** It was after April 13th, '06.

3 **Q.** That's about a nine-month period. Is it
 4 near the beginning of that nine-month period or has
 5 it been in the last couple of weeks?

6 **A.** I don't know that I could identify dates,
 7 but I can tell you the subject matter.

8 **Q.** That would help, yes.

9 **A.** The subject matter is, "What are we going
 10 to do about getting our loan collateralized?" And
 11 like I said earlier, the first situation that was
 12 being discussed was the Royal Hotel.

13 **Q.** Right. Has he discussed any other
 14 properties that he would give you as collateral?

15 **A.** Verbally on the phone, there was some
 16 property that they were involved in in the Temecula,
 17 California, area and the general Sacramento area of
 18 California.

19 **Q.** Now, the Temecula, California, property,
 20 did he refer to that as the Bundy Canyon property by
 21 any chance?

22 **A.** Just identified it by the name of the
 23 property.

24 **Q.** Okay.

25 **A.** Yeah.

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1 **Q.** Has Mr. Milanowski in fact provided you
 2 with any additional collateral for your debt?

3 **A.** No.

4 **Q.** Has he offered any collateral of his
 5 personal assets to you?

6 **A.** No.

7 **Q.** Has he made any suggestion to you about
 8 how you should vote with regard to this plan of
 9 reorganization?

10 **A.** No. Tom Allison did, but Joe Milanowski
 11 did not.

12 **Q.** Other than your conversation with Tom
 13 Allison and your own attorney, has anyone discussed
 14 whether or not you should accept or reject the
 15 proposed plan?

16 **A.** No.

17 **Q.** Have you checked on any Web sites or
 18 Internet sites for that information?

19 **A.** I am computer challenged, but I do have
 20 children that have computers.

21 **Q.** Okay.

22 **A.** And if I need something, I call them and
 23 somehow or other it magically appears on my fax
 24 machine.

25 **Q.** Has anybody -- has any of your children
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1 provided you with any of that information over your
 2 fax machine concerning whether or not to vote for or
 3 against the plan?

4 **A.** The decision to not vote for the plan was
 5 strictly my own. My son-in-law, Don Walker, had a
 6 different view. He thought we should vote to accept
 7 it.

8 **Q.** Okay.

9 MR. SCHWARTZER: Mr. Sherman, if you have
 10 any questions, I guess this is as good a time as
 11 any, and if you want to take a break before we
 12 start, I --

13 THE WITNESS: Anybody want a Pepsi or
 14 something?

15 MR. SCHWARTZER: I'd love a Pepsi.

16 (Recess taken from 3:28 p.m.

17 to 3:34 p.m.)

18 BY MR. SCHWARTZER:

19 **Q.** I just handed you Exhibit H, which looks
 20 like 1099 forms. Are those copies of the 1099 forms
 21 that you received from USA Commercial Mortgage?

22 **A.** Yes.

23 **Q.** And I do have just a few more questions.

24 With regard to the payments from USA
 25 Commercial Mortgage, do you know were the payments
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1 always wired to your account or did you receive
 2 checks?

3 **A.** No, not in the beginning. In the
 4 beginning, they were -- there were deposit slips.

5 **Q.** Do you by any chance -- did you by any
 6 chance make copies of their checks to you?

7 **A.** I don't believe so.

8 **Q.** Okay.

9 **A.** No.

10 **Q.** At this time do you have any recollection
 11 whether those checks were from USA Commercial
 12 Mortgage Investors Trust?

13 **A.** I have no idea.

14 **Q.** Okay. So you just have no recollection
 15 one way or the other?

16 **A.** Uh-uh.

17 THE REPORTER: Your answer? You said
 18 "uh-uh." Your answer?

19 BY MR. SCHWARTZER:

20 **Q.** Oh, yes. "Uh-uh" could be interpreted a
 21 lot of different ways.

22 **A.** What was the question then?

23 **Q.** Do you have any recollection whether any
 24 of the checks that were made payable to you were
 25 from the USA Commercial Mortgage Investors Trust
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1 account?

2 **A.** I don't believe they ever would have been
 3 made to me if that's what you're saying.

4 **Q.** No, I'm saying they made out checks
 5 payable to you. Who would they have made the checks
 6 payable to? Would they have made it payable to some
 7 other entity or name?

8 **A.** No, there's only one.

9 MR. HOLLEY: Perhaps --

10 **A.** That's me DBA.

11 MR. HOLLEY: Perhaps we can try to get a
 12 little bit of a time frame here.

13 MR. SCHWARTZER: Okay.

14 MR. HOLLEY: It's a little confusing to
 15 me.

16 MR. SCHWARTZER: Okay.

17 **A.** The first three or four interest payments
 18 were handled through -- and I'm trying to find the
 19 checks here -- were handled via deposit slips.

20 BY MR. SCHWARTZER:

21 **Q.** And --

22 **A.** After that we then said, "You know, this
 23 is crazy. You know, they mail them to us. We have
 24 to make out a deposit slip. We have to take it to
 25 the" -- so we got off of that.

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1 **Q.** Okay. Do you recall of those first few
 2 checks to whom they were made payable?

3 **A.** I have no idea, but I bet it was Loan
 4 Partners Capital I would guess.

5 **Q.** Now I notice that the --

6 **A.** If they weren't --

7 **Q.** -- the promissory note doesn't -- the
 8 promissory note, which is attached as an exhibit to
 9 Exhibit I --

10 **A.** Uh-huh.

11 **Q.** -- that promissory note says it's payable
 12 to Del and Ernestine Bunch, so why would they have
 13 made the check out to any other name?

14 **A.** Because a DBA is Del Bunch doing business
 15 as.

16 **Q.** Okay. And do you recall whether you ever
 17 requested them to do that?

18 **A.** No.

19 **Q.** So actually as we sit here today, you
 20 have no recollection how they made out those checks?

21 **A.** No.

22 **Q.** Okay. Number two --

23 **A.** As long as they cleared, that's all I --

24 **Q.** The next part of that is I also want
 25 to -- the other part of the question is: As we sit
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1 here today, you have no recollection whether those
 2 checks were coming from an account entitled "USA
 3 Commercial Mortgage" or "USA Commercial Mortgage
 4 Investors Trust"?

5 **A.** No.

6 **Q.** Okay.

7 **A.** Nope. Because after the first three or
 8 four, like I say, after that they were all wires,
 9 and fortunately our bank -- and I didn't notice this
 10 until all this nonsense came about, but they put
 11 right on the statement "USA COMMERCIAL."

12 **Q.** It says "USA COMMERCIAL ACH 349," so that
 13 gives an account number. Would you --

14 **A.** Unfortunately it gives my social security
 15 number.

16 **Q.** Well we're not going to be showing it to
 17 a lot of people.

18 **A.** Yeah, well I --

19 **Q.** And I also notice that the more recent
 20 ones, like this one which is marked as Exhibit L,
 21 doesn't say "USA Commercial Mortgage," but it says
 22 "USA Capital."

23 **A.** That's what it says.

24 **Q.** So I assume that means some of them say
 25 "USA Commercial" and some of them say "USA Capital."

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1 **A.** All I can tell you is this one says "USA
 2 Capital."

3 **Q.** And which one were you looking at before
 4 said "USA COMMERCIAL"?

5 **A.** This would have been January 31st, '03.

6 **THE WITNESS:** Can we go off the record
 7 for a second?

8 **MR. HOLLEY:** Do you want to talk?

9 **THE WITNESS:** No. Tell him off the
 10 record.

11 **MR. HOLLEY:** Oh, sure.

12 **MR. SCHWARTZER:** Okay. Let's go off the
 13 record, Mr. Bunch.

14 (Recess taken from 3:39 p.m.

15 to 3:46 p.m.)

16 **MR. SCHWARTZER:** Let's go back on the
 17 record.

18 BY MR. SCHWARTZER:

19 **Q.** I want to ask you. You just handed me a
 20 document consisting of pages 5 through 8, and it
 21 looks -- so that means it's part of another
 22 document. Is this part of a financial statement
 23 that you were given?

24 **A.** Correct.

25 **Q.** Okay.

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1 **A.** Where are the checks I gave you that you
 2 already have with those narratives in it?

3 **MR. HOLLEY:** Do you --

4 **A.** Was it F?

5 **MR. HOLLEY:** Exhibit F are copies of the
 6 checks, yes.

7 BY MR. SCHWARTZER:

8 **Q.** Yeah, Exhibit --

9 **A.** Okay. Look -- yeah, right. Look at
 10 1992.

11 **Q.** Well, you mean 2002?

12 **A.** I'm sorry.

13 **Q.** Okay. I have checks here dated all over
 14 the place, including some in 2002.

15 **A.** But did you not also receive these
 16 narratives?

17 **Q.** Now, I'm sure that my client has copies
 18 of these financial statements.

19 **A.** I am too.

20 **Q.** Okay. So this is --

21 **A.** But what I'm --

22 **Q.** So basically what you're telling me, the
 23 information about the investments in Investment
 24 Partners that you have --

25 **A.** Uh-huh.

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1 **Q.** -- is based upon the financial statements
 2 that were provided by USA Commercial Mortgage to
 3 you?

4 **A.** Right.

5 **Q.** And you don't have any other independent
 6 knowledge of it?

7 **A.** No. When I get a statement from like
 8 Deloitte & Touche, I have not much reason to doubt
 9 the information.

10 **Q.** I'll remain silent on my opinion of that.

11 **A.** Yeah, right.

12 **Q.** On the other hand, you didn't have any --
 13 other than the information you got from the
 14 financial statements, you did not have any other
 15 direct conversations with them about how they were
 16 putting money in USA Investment Partners?

17 **A.** Nope. No.

18 **Q.** And they never told you, "You know, Del,
 19 you know, the great news is we're able to take your
 20 money and put it into these real estate developments
 21 in California and make a ton of money"?

22 **A.** That's what these things said.

23 **Q.** That's what those things said, but did
 24 either Mr. Dickinson or Mr. Hantges or
 25 Mr. Milanowski ever say that they were using your

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1 money to do that?

2 A. They did not specify as to what they were
3 doing with the loans we made to them.

4 Q. Okay.

5 A. Uh-uh.

6 Q. Okay. That's what I needed to know. I
7 have no further questions at this time.

8 A. But one of these explains when they took
9 the great majority of assets and transferred them
10 into Investment Partners, and that was done in a
11 certain year, and I -- I was hoping this is -- that
12 this would tell us.

13 Q. But the important thing from my point of
14 view is finding out if you had any conversations
15 with them that they talked to you about this rather
16 than you --

17 A. Not past these.

18 Q. So your only information about Investment
19 Partners and the assets put in Investment Partners
20 comes from the financial statements that you were
21 given?

22 A. Right.

23 MR. SCHWARTZER: Okay. I have no further
24 questions, and I appreciate your being here.

25 Mr. Holley, if you want to ask any

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1 questions --

2 MR. HOLLEY: I think that do you want to
3 give them those bank statements so that --

4 THE WITNESS: I ran them a copy.

5 MR. SCHWARTZER: Okay. What we'll do is
6 attach as the next exhibit in order --

7 THE WITNESS: I assume since you asked
8 the question it's okay.

9 MR. SCHWARTZER: -- a set, which would be
10 Exhibit M, which would be a set of your financial --

11 THE WITNESS: Bank statements.

12 MR. SCHWARTZER: -- your bank statements,
13 and this is the bank statements that would show all
14 the payments that were received by you?

15 THE WITNESS: Correct.

16 MR. SCHWARTZER: Okay.

17 THE WITNESS: Never missed one.

18 MR. SCHWARTZER: Okay. And that would be
19 the bank statements --

20 THE WITNESS: From BankWest.

21 MR. SCHWARTZER: -- from BankWest.

22 MR. HOLLEY: What I would suggest,
23 Lenard, for keeping track of this --

24 MR. SCHWARTZER: Yes.

25 MR. HOLLEY: -- is --

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1 MR. SCHWARTZER: Label them in order?
2 MR. HOLLEY: -- label them in years as
3 subsequent exhibits. For example --
4 MR. SCHWARTZER: Okay. I'll do that. So
5 the exhibit for the year -- I just want to make sure
6 I can read these. The first one is for the year
7 2000?

8 MR. HOLLEY: Yes.

9 THE WITNESS: That would be --

10 MR. SCHWARTZER: It will be Exhibit M.
11 The one for the year -- and then the next one has
12 December 30th, 2000 through --

13 MR. HOLLEY: Now let's see. The --

14 MR. SCHWARTZER: -- January 31st --

15 THE WITNESS: Yeah. That's a dumb
16 statement.

17 MR. HOLLEY: What you will see with --

18 THE WITNESS: It's for the month of
19 January.

20 MR. SCHWARTZER: For the month of
21 January.

22 THE WITNESS: Right.

23 MR. SCHWARTZER: And we'll label that
24 as --

25 MR. HOLLEY: Well if I -- this next one
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1 in sequence will be Exhibit N, but what you will see
2 is for 2001 --

3 MR. SCHWARTZER: Yes.

4 MR. HOLLEY: -- there's the month of
5 January.

6 MR. SCHWARTZER: Uh-huh.

7 MR. HOLLEY: Then it skips over to the
8 month of August, so this was only -- this is only a
9 partial.

10 MR. SCHWARTZER: Okay. So these are the
11 bank ---

12 THE WITNESS: No, wait a minute. We
13 should have every month.

14 MR. SCHWARTZER: These are the bank
15 statements only for the months in which you received
16 a payment from USA Commercial Mortgage?

17 THE WITNESS: Yes.

18 MR. SCHWARTZER: Okay.

19 MR. HOLLEY: But --

20 THE WITNESS: Well --

21 MR. HOLLEY: -- I can't say that's true.

22 THE WITNESS: But it was every month from
23 July of 2000 through March of 2005.

24 MR. HOLLEY: I think the intent --

25 THE WITNESS: And if you count the
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1 months, there should be an identical number of
2 statements here.

3 MR. HOLLEY: Yes. I think the intent
4 with respect to 2001 is that every month be
5 provided, but the -- what you have there skips some
6 months.

7 MR. SCHWARTZER: Okay.

8 THE WITNESS: Should not.

9 MR. HOLLEY: So I know it should not, but
10 what we will do is we will supplement what will be
11 Exhibit N --

12 THE WITNESS: All right.

13 MR. HOLLEY: -- with the months that
14 happen to be missing in the attachment that we
15 presently have.

16 THE WITNESS: Right.

17 MR. SCHWARTZER: Okay. And Exhibit N is
18 for the year 2001. The Exhibit O will be for the
19 year 2002. The Exhibit P will be for the bank
20 statements from BankWest for the year 2003.

21 Exhibit Q will be the BankWest statements
22 for the year 2004. Exhibit R will be the BankWest
23 bank statements for the year 2005.

24 THE WITNESS: There's only three --

25 MR. SCHWARTZER: Okay.

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1 THE WITNESS: Sorry. Go ahead.

2 MR. SCHWARTZER: And --

3 THE WITNESS: You should have three for
4 '06.

5 MR. HOLLEY: And then '06 has already
6 been marked previously as Exhibits J, K and L.

7 MR. SCHWARTZER: Okay. That's correct.

8 So that being said, are we completed or
9 do you have any questions, Richard?

10 MR. HOLLEY: I do not have any questions.

11 MR. SCHWARTZER: Okay. We're done except
12 for you marking these up and then immediately
13 running home, doing this so we could have a
14 transcript sometime tonight.

15 (Exhibits O through R were
16 marked for identification.)

17 (Examination recessed at
18 3:53 p.m.)

19

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1 CERTIFICATE OF WITNESS
2 PAGE LINE CHANGE REASON
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14 _____
15 * * * * *

16 I, DEL M. BUNCH, JR., witness herein, do
hereby certify and declare under penalty of perjury
17 the within and foregoing transcription to be my Rule
2004 Examination in said action; that I have read,
18 corrected and do hereby affix my signature to said
Rule 2004 Examination.

19

20 _____
21 DEL M. BUNCH, JR.
Witness

22 Subscribed and sworn to before me this _____
23 day of _____ 200__.
24

25 NOTARY PUBLIC

LAURIE WEBB & ASSOCIATES (702) 386-9322

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
4 COUNTY OF CLARK)

5 I, William C. LaBorde, a duly commissioned
Notary Public, Clark County, State of Nevada, do
6 hereby certify:

7 That I reported the taking of the Rule 2004
Examination of the witness, DEL M. BUNCH, JR., at
8 the time and place aforesaid;

9 That prior to being examined, the witness was
by me duly sworn to testify to the truth, the whole
10 truth, and nothing but the truth;

11 That I thereafter transcribed my shorthand
notes into typewriting and that the typewritten
12 transcript of said Rule 2004 Examination is a
complete, true and accurate record of testimony
13 provided by the witness at said time to the best of
my ability.

14 I further certify (1) that I am not a
15 relative, employee or independent contractor of
16 counsel of any of the parties; nor a relative,
17 employee or independent contractor of the parties
involved in said action; nor a person financially
18 interested in the action; nor do I have any other
relationship with any of the parties or with counsel
19 of any of the parties involved in the action that
may reasonably cause my impartiality to be
questioned; and (2) that transcript review was not
requested.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand in the County of Clark, State of Nevada, this
19th day of December 2006.

22

23 _____
24 William C. LaBorde, CCR 673, RPR, CRR

25 LAURIE WEBB & ASSOCIATES (702) 386-9322

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